

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

THE CITY OF NEW YORK

Plaintiff,

v.

OLD DOMINION TOBACCO COMPANY,
INCORPORATED d/b/a ATLANTIC
DOMINION DISTRIBUTORS,

Defendant.

Case No. 1:20-cv-05965

**AFFIDAVIT OF KEVIN K. BARNEY
IN SUPPORT OF MOTION
REGARDING SUFFICIENCY OF
PLAINTIFF'S PRIVILEGE LOG
AND TO COMPEL PRODUCTION**

I, Kevin K. Barney, am Executive Vice President of Sales and Marketing of Atlantic Dominion and submit the following affidavit based on my personal knowledge:

1. On May 19, 2020, Eric Proshansky, an attorney for the City of New York (the "City"), sent an email to me and colleagues threatening to amend the complaint in *The City of New York v. Cigarettes Unlimited, L.C.* (19-cv-3998) to add Atlantic Dominion as a defendant. Mr. Proshansky indicated that he intended to file the amended complaint no later than May 30, 2020.

2. Over that summer and fall, Atlantic Dominion, through its counsel, communicated with the City regarding a resolution to the City's concerns.

3. As part of that process, Mr. Proshansky proposed that a Mr. Vincent Lesnak serve as an independent monitor of Atlantic Dominion. Mr. Proshansky encouraged us to meet with Mr. Lesnak to discuss the possibility of him acting as an independent monitor, and we did so.

4. On August 25, 2020, Vincent Lesnak and Teresa Hinson, whom he identified as his field agent, visited the Atlantic Dominion offices to discuss his proposed monitorship.

5. During the meeting, Mr. Lesnak detailed what he would do as an independent third-party monitor of Atlantic Dominion.

6. During that meeting, Mr. Lesnak advised that he and Mr. Proshansky were good friends who had vacationed together.

7. Mr. Lesnak described Atlantic Dominion as “the first fish in the bowl” and told us that the City could also sue me and my colleagues individually.

8. Based on Mr. Lesnak’s conduct at the meeting, we advised Mr. Proshansky, through counsel, that we had concerns about his serving as a monitor and proposed that the City consider alternative candidates for the independent third-party monitor.

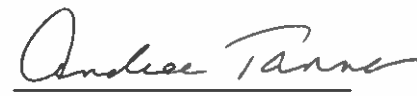
9. Mr. Proshansky advised that the City would only agree to a resolution and not sue Atlantic Dominion if Mr. Lesnak served as the independent third-party monitor. That was a non-negotiable term; proposing any alternative was a dealbreaker.

10. We received a proposal from Mr. Lesnak that would have required Atlantic Dominion to pay Mr. Lesnak nearly half a million dollars for his service as a monitor.

11. Atlantic Dominion’s discussions with the City regarding Mr. Lesnak’s potential service as an independent third-party monitor continued through late October 2020.

Dated this 24th day of June, 2023.


Kevin K. Barney


Notary

